



ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D. C. 20301

8 JUN 1982

HEALTH AFFAIRS

BEFORE THE OFFICE, ASSISTANT SECRETARY
OF DEFENSE (HEALTH AFFAIRS)
UNITED STATES DEPARTMENT OF DEFENSE

Appeal of) OASD(HA) File 82-03
Sponsor:) FINAL DECISION
SSN:)

This is the FINAL DECISION of the Assistant Secretary of Defense (Health Affairs), in the CHAMPUS Appeal OASD(HA) Case file 82-03 pursuant to 10 U.S.C. 1071-1089 and DoD 6010.8-R, Chapter X. The appealing party is the CHAMPUS beneficiary with the attending physician appointed as the appealing party's representative. The appeal involves the denial of a request for preauthorization of benefits and an amount in dispute in excess of \$300 is deemed to have been met (See DoD 6010.8-R, Chapter X, B.7). The estimated cost of the requested services in 1980 was \$3,000 to \$3,300. The Hearing File of Record, the tape of oral testimony and argument presented at the hearing, the Hearing Officer's Recommended Decision and the Memorandum of Concurrence from the Director, OCHAMPUS, have been reviewed. It is the Hearing Officer's recommendation that CHAMPUS deny the request for preauthorization of CHAMPUS benefits for a total chemical face peel as treatment for actinic keratosis. The Hearing Officer found the total chemical face peel was not medically necessary and was primarily for cosmetic purposes. The Director, OCHAMPUS concurs in this Recommended Decision but recommends issuance of a FINAL DECISION by the Acting, Assistant Secretary of Defense (Health Affairs) to correct deficiencies in analysis and findings of the Hearing Officer.

The Acting Assistant Secretary of Defense (Health Affairs), after due consideration of the appeal record, concurs in the substantive recommendation of the Hearing Officer to deny preauthorization but rejects the Hearing Officer's Recommended Decision. It is the finding of the Assistant Secretary of Defense (Health Affairs) that the Hearing Officer's Recommended Decision does not reflect proper evaluation and analysis of the evidence or applicable regulations.

The FINAL DECISION of the Acting, Assistant Secretary of Defense (Health Affairs) therefore is to deny preauthorization of CHAMPUS benefits for a total chemical face peel for treatment of actinic keratosis as not medically necessary services, inappropriate medical care and an excluded cosmetic procedure. This FINAL DECISION is based on the appeal record as stated above.

FACTUAL BACKGROUND

On May 1, 1980, the attending physician requested OCHAMPUS determine if a total chemical face peel would be cost-shared by CHAMPUS for the beneficiary. The diagnosis given by the attending physician was actinic keratosis of the face, multiple lesions of the epidermoid carcinoma variety. A request for preauthorization was formally submitted on September 20, 1980. The attending physician submitted a pathological report dated 1976-77 diagnosing actinic keratosis and basosquamous cell carcinoma of the nose and epidermoid carcinoma, basal cell type on the skin of the neck. The medical records were submitted for peer review by the Colorado Foundation for Medical Care on two occasions. In the opinions of the reviewing physicians, with specialities in internal medicine and plastic surgery, the chemical face peel has not been documented as the treatment of choice for multiple actinic keratosis lesions as there is no evidence the face peel will have an effect on future pathological changes in the lesions. The usual approach was stated to be the 5-fluorouracil topical. The chemical face peel was opined to be not medically necessary and primarily cosmetic. Based on these peer reviews, the request for authorization was denied, and the denial was affirmed upon formal review by OCHAMPUS. The attending physician requested a hearing. The hearing was held in Jacksonville, Florida on May 19, 1981 before Morris J. Reiser, Hearing Officer. The Hearing Officer has submitted his Recommended Decision. All prior administrative levels of appeal have been exhausted and issuance of a FINAL DECISION is proper.

ISSUES AND FINDINGS OF FACT

The primary issues in this appeal are whether a total chemical face peel for the treatment of actinic keratosis is medically necessary or constitutes a primarily cosmetic procedure.

Under the Department of Defense Appropriations Act of 1981 (Public Law 96-527, Section 743), funds are not available for any service or supply which is not medically necessary to prevent, diagnose, or treat a physical illness, injury or

bodily malfunction. This limitation is currently applicable to Fiscal Year 1982 under the Department of Defense Appropriations Act of 1982, Public Law 97-114.

Under DoD 6010.8-R, Chapter IV A.1., the Department of Defense Regulation governing CHAMPUS, the CHAMPUS Basic Program will cost-share medically necessary services and supplies required in the diagnosis and treatment of illness or injury, subject to all applicable limitations and exclusions. Services which are not medically necessary are specifically excluded (DoD 6010.8-R, Chapter IV G.1.).

Under DoD 6010.8-R, Chapter II, B.104, medically necessary is defined as:

"... the level of services and supplies (that is, frequency, extent and kinds) adequate for the diagnosis and treatment of illness or injury Medically necessary includes the concept of appropriate medical care."

Appropriate medical care is defined as:

"a. That medical care where the medical services performed in the treatment of a disease or injury ... are in keeping with the generally accepted norm for medical practice in the United States."

Therefore, to constitute a CHAMPUS covered service, a total chemical face peel (with phenol) must be appropriate for the treatment of actinic keratosis and in keeping with the generally accepted norm for medical practice in the United States.

As stated above peer review by qualified physicians opined the chemical face peel was not the treatment of choice for actinic keratosis due to the lack of documentation of future pathological changes in the lesions. Therefore, according to these opinions, the chemical face peel is not the accepted norm for treatment and does not constitute a medically necessary service or appropriate medical care.

The attending physician has strongly objected to these opinions in his submissions for the record and testimony at the hearing. The attending physician testified there are several acceptable methods of treatment of actinic keratosis, and that due to the extensive keratosis, topical 5-fluorouracil (5-FU) could not be used for this beneficiary. The attending

physician further testified he treats actinic keratosis only by chemical peeling with phenol. The attending physician submitted an excerpt from the Annals of Plastic Surgery in support of his position. The excerpt from the Annals of Plastic Surgery indicates the primary use of chemical face peel is to remove facial wrinkling that cannot be improved sufficiently by a face lift. The procedure is briefly stated to have been of great help in superficial skin lesions such as keratosis. The trend toward more careful selection of patients for employment of chemical peeling is noted because of the rare complications which include hypertrophic scarring. I find little support in this article for the position that chemical face peeling is the normal and accepted method of treatment for actinic keratosis. The article deals with its primary use as removal of facial wrinkles, a cosmetic procedure.

The attending physician also provided for the record a letter from _____, Professor of University of Pennsylvania, stating actinic keratoses are destroyed by phenol peels. Dr. _____ does note the thick, hyperkeratotic types are not eradicated. Corresponding with the excerpt from the Annals of Plastic Surgery, Dr. _____ states the primary purpose of phenol peeling is improvement of the dermis.

A very brief statement by Dr. _____, Miami, Florida, a dermatologist, was also provided for the record by the attending physician. Dr. _____, without discussion, states chemical peeling with phenol is a very acceptable method of treatment of actinic keratosis.

The medical opinions provided by the attending physician clearly support the chemical face peel with phenol in cosmetic improvements and also strongly indicate cosmetic procedures are the primary function of chemical face peeling. The attending physician's medical opinions and the OCHAMPUS peer review do not disagree on this point.

As the primary purpose of chemical face peeling appears cosmetic, its secondary use as clinical treatment of pre-cancerous lesions must be clearly demonstrated. The attending physician noted, in his submissions for the record, the publication of many articles documenting the efficacy of the chemical face peel for actinic keratosis although copies were not submitted nor citations provided to these articles. The OCHAMPUS formal review decision suggested the attending physician submit these articles for review. Subsequently, the one excerpt discussed above was submitted in support of his position. In absence of the attending physician providing

the medical documentation on which he apparently relies, H. Conn., M.D., 1981 Current Therapy (W.B. Saunders Company) a recognized medical publication has been consulted. Contrary to the attending physician's testimony that 5-FU cannot be used to treat keratosis, in an article from Dr. Hein J. TerPoorten, M.D., Precancerous Lesions of the Skin and Mucous Membranes (page 731-733), topical chemotherapy with 5-FU is recommended for multiple maculosquamous actinic keratosis. Chemical face peeling with phenol is not discussed as treatment for actinic keratosis. Further, in an article entitled Epithelial Neoplasms and Precancerous Lesions by Dr. Herman Pinkus, M.D., Dermatology in General Medicine, (McGraw Hill Book Company, 1979), 5-FU is noted to be the commonly used method of treatment of actinic keratosis. Dr. Pinkus notes liquified phenol may be used but states 5-FU has added a new dimension to the treatment of large areas of actinically damaged skin.

The peer review report, discussed above, also indicates topical 5-FU to be the treatment of choice for multiple actinic keratosis. This peer review, as an independent review, is entitled to substantial weight in the decision on this appeal. The authorities presented by the attending physician indicate chemical face peeling is primarily a cosmetic procedure. These authorities do not present any opinion or documentation as to its preference for multiple lesions. Contrawise, the authorities discussed above definitely judge 5-FU the accepted treatment for multiple lesions.

As the burden of proof lies with the appealing party, it is incumbent upon the appealing party to produce evidence (medical opinion) necessary to support the opposition to the CHAMPUS determination. As the attending physician has chosen not to provide the many articles he asserts would document the efficacy of the chemical face peel, I must weigh the independent evidence available in reaching my decision. From a review of the record, I find the evidence does not establish the chemical face peel with phenol is the generally acceptable procedure for treatment of multiple actinic keratoses. While selected use of chemical face peeling for treatment of actinic keratosis is discussed by evidence of record, I find, from the weight of the evidence, that use of topical 5-FU is the acceptable method of treatment. Therefore, I have determined the chemical face peel with phenol is not appropriate medical care nor medically necessary in the treatment of multiple actinic keratosis upon the evidence in this appeal.

COSMETIC PROCEDURES

Under DoD 6010.8R, Chapter IV, E.8, cosmetic, reconstructive and/or plastic surgery procedures are defined as procedures which can be expected to primarily improve physical appearance and/or which are performed primarily for psychological purposes and/or which restore form, but which do not correct or materially improve a bodily function. This regulatory provision implements the funding prohibitions for cosmetic procedures in the above cited Appropriations Acts.

As I have found above that chemical face peeling has not been demonstrated to be the standard treatment for actinic keratosis, I must conclude the result sought extends beyond clinical treatment and is directed primarily at improvement of bodily form, not function. Therefore, the procedure is found to be cosmetic in nature and excluded from CHAMPUS coverage under the above cited authorities.

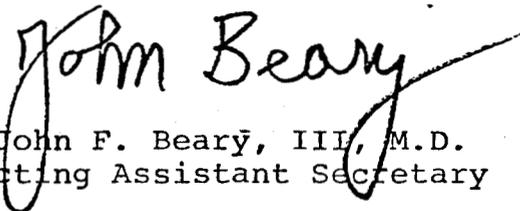
The Department of Defense recognizes it is the responsibility of the attending physician to prescribe the method of treatment of his/her patient and the agency does not desire to interfere with this prerogative. However, the Department of Defense is charged with the responsibility for CHAMPUS cost-sharing in accordance with the governing law and regulation, with due consideration for proper care and treatment of CHAMPUS beneficiaries.

The Department of Defense further recognizes the beneficiary in this appeal requires medical care for her condition. The beneficiary may seek medical treatment from any source and by any method she may choose. By this decision, the Department of Defense in no way precludes that right. CHAMPUS is, however, a statutory benefits program that is limited to cost-sharing care demonstrated to be appropriate and medically necessary. In absence of such evidence, CHAMPUS will decline to provide cost-sharing.

SUMMARY

In summary it is the FINAL DECISION of the Acting Assistant Secretary of Defense (Health Affairs) that the request for preauthorization of CHAMPUS cost-sharing of a total chemical face peel be denied as not medically necessary, inappropriate medical care and a cosmetic procedure under DoD 6010.8-R and therefore excluded from CHAMPUS coverage.

The request for preauthorization and the appeal are therefore denied. Issuance of this Final Decision completes the administrative appeals process under DoD 6010.8-R, Chapter X, and no further administrative appeal is available.


John F. Beary, III, M.D.
Acting Assistant Secretary